

Appl. No. 10/756,740
Amendment dated October 22, 2007
Reply to Office Action mailed July 24, 2007

REMARKS

Reconsideration of this application is respectfully requested. Applicants believe that consideration of this amendment is proper because they have attempted to comply with every requirement expressly set forth in the previous Office Action dated July 24, 2007 and believe the application is now in condition for allowance.

Claims 1, 12 and 30 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite and for failing to particularly point out and claim the invention. Applicant has amended claims 1, 12 and 30 to specify that sawdust as the raw material. Support for this amendment if found in paragraph 8 of the published application.

Claims 1, 8, 30, 31 and 35-29 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,587,320 to Shindo. The features of claims 2-4 and 14 have been incorporated into claim 1. There is no discussion of claim 14 in the previous office action. Applicant therefore believes that amended claim 1 is patentable over the prior art of record.

Further, Applicant's claims distinguish over the references in several respects. The use of two mixing devices prevents the sawdust from becoming hardened at the top of the basin. Driving the mixing devices to rotate in opposite directions greatly improves the capacity of the device. Partly overlapping the area covered by the two helical stirrers avoids hardening of the sawdust that might occur in the space between the

two mixers. It is also helpful in loosening the sawdust from the top of the basin. The space between the curves of the concave parts and the mixing device are spaced for more even mixing.

The Examiner states that Shindo discloses at least two mixing devices positioned within each of the concave parts. He points to FIG. 9 elements 140 and 145 as evidence of this feature. However, Shindo only shows a single mixing element in each concave part. Mixing elements 140 and 145 are in adjacent concave parts, not in the same concave part. Mixing element 140 stirs the material in the surface of 521, while mixing element 145 stirs the material in the surface of 522.

Further, Shindo fails to disclose treatment for a combination of sawdust and excrement. The reference clearly is designed for processing of kitchen garbage. No provision is made for adding sawdust to the waste.

There is no disclosure in Shindo of overlap of the blade stirrers featured in original claim 11, now included in amended claim 1. Shindo teaches a rotating shaft having an annular conveying part and an inner conveying part. There is no drawing, teaching or suggestion that there be partial overlap of the stirrers.

Thus Shindo cannot anticipate the subject claims when at least four claim elements are absent. Applicant respectfully submits that this rejection has been traversed and should be withdrawn.

Appl. No. 10/756,740
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Claim 40 stands rejected under 35 U.S.C. § 103(a) as being obvious over Shindo as applied to claim 37. Applicant argues that at least three claim elements of claim 1 are absent. In addition, the Examiner has provided no reference to substantiate the assertion that it would have been obvious to continue rotation of the mixing means during cleaning of the apparatus. It is respectfully requested that the Examiner supply a reference and establish a *prima facie* case of obviousness or withdraw the rejection.

Claims 2-7, 9, 10, 20-23 and 26-29 stand rejected under 35 U.S.C. § 103(a) as being obvious over Shindo in view of the English translation of Kitsui. Applicant suggests that no *prima facie* case of obviousness has been established since, even if the references are combined as suggested, not all elements of the subject claims are revealed.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). Second, there must be a reasonable expectation of success. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). If the proposed

Appl. No. 10/756,740
Amendment dated October 22, 2007
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modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). Finally, to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Even if the claims are combined as the Examiner suggests, all elements of the subject claims are not shown or described. At least the partial overlap of the stirrers is absent from this combination of references. Further, Kitsui does not show a helical stirrer. Figs. 2-4 of JP 20011120460 plainly show that the stirrer is a discontinuous arc, not a helix. No *prima facie* case of obviousness has been established and this rejection should be withdrawn.

Claim 11 stands rejected under 35 U.S.C. § 103(a) as being obvious over Shindo in view of the English translation of Kitsui and/or Kitsui as applied to claim 1, and further in view of Shimizu. Shimizu is cited to show the partially overlapping of the

Appl. No. 10/756,740
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field of the stirrers. Applicant suggests that no *prima facie* case of obviousness has been established, and respectfully traverses this rejection.

No motivation to combine these four references has been suggested. Applicant finds no statement in Shindo that other arrangements for the agitation arms are useful, nor is there motivation in Shimizu that the agitation pawls would be advantageously used elsewhere. Further, the Examiner has not provided any motivation as to why these references should be combined. Thus, no motivation to combine has been shown.

There is little likelihood of success in implementing this combination without modification. The reactor basin of both the Shindo and Shimizu references has barriers between the spokes that would interfere with the operation of a helical stirrer. One skilled in the art would be unable to apply a helical stirrer without modifying the vessel of the processing device.

Claims 24 and 25 stand rejected under 35 U.S.C. § 103(a) as being obvious over Shindo in view of the English translation of Kitsui and/or Kitsui as applied to claim 23, and further in view of Hudgina. Applicant respectfully submits that no *prima facie* case of obviousness has been established.

Again, there is no motivation to combine these references. Applicant finds no suggestion that would lead on skilled in the art to seek these modifications. Further, there is little expectation of success in the combination. The Examiner admits that

Appl. No. 10/756,740
Amendment dated October 22, 2007
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inclusion of the conduit "would have required only minor structural alterations[.]" In other words, if the conduit were added without alterations, it would not have worked.

In addition, the Examiner has completely ignored the features of claim 25. This claim features holes of decreasing size toward the outlet. No similar feature is shown or taught by any of the references, including Hudgins. The Examiner must consider each and every word on the claims. Thus, this rejection is improper as applied to claim 25.

By the above arguments and amendments, Applicants believe that they have complied with all requirements expressly set forth in the pending Office Action. Issuance of a Notice of Allowance on the remaining allowed claims is respectfully requested. Should the Examiner discover there are remaining issues which may be resolved by a telephone interview, he is invited to contact Applicants' undersigned attorney at the telephone number listed below.

Respectfully submitted,

GREER, BURNS & CRAIN, LTD.

By 
Carole A. Mickelson
Registration No. 30,778

Customer No. 24978
October 22, 2007
300 S. Wacker Drive – Suite 2500
Chicago, Illinois 60606-6501
Telephone: (312) 360-0080
Facsimile: (312) 360-9315